99-221

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IN THE
SUPREME COURTS OF THE UNITED STATES
OCTOBER, 1998

SYLVESTER MOTT,
Petitioner,

vs.

KENNY ROBINSON,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

I.

MUST A FEDERAL COURT GRANT A HABEAS PETITIONER AN EVIDENTIARY HEARING TO ESTABLISH THE REASON WHY HE FAILED TO MEET THE ONE-YEAR DEADLINE ON SEEKING HABEAS REVIEW CONTAINED IN THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996, WHERE THE ONLY EXCUSE OFFERED IS THE PETITIONER'S MISTAKEN ASSUMPTION THAT THE DEADLINE DID NOT APPLY TO HIS CASE?

COUNTERSTATEMENT OF THE CASE

For purposes of the instant Petition only, Respondent accepts Petitioner's statement of the case.

REASONS FOR DENYING THE WRIT

In 1996, seeking the close the loophole which, as Petitioner notes, granted "state prisoners...almost unfettered discretion in deciding when to file a federal habeas petition." (Petitioner's Brief, p 16), Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Among the provisions of the new statute was a one-year limitation on filing a federal habeas petition. 28 USC §2244(d). Under prevailing constructions of the statute, Petitioner had a one-year grace period within which to file his petition following its enactment. *See, eg, Miller v Marr*, 141 F3d 976 (CA 10, 1998); *Calderon v United States*, 112 F3d 386 (CA 9, 1997). Accordingly, he had until April 24, 1997 to file his petition.

As Petitioner acknowledges filing his habeas petition after the deadline, and asserts nothing more than a mistaken assumption that the new deadline did not apply to him to excuse his failure[1], there appears no reason for this Court to review the

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1 Respondent does not claim that there are no circumstances which would justify an equitable tolling of the limitation: a habeas petitioner who can demonstrate that the State has unfairly impeded his access to the Federal court, for example – or one who has been in a coma – might have a compelling argument that some portion of the time he was disabled from seeking review should be excluded from computing the one-year limitation on seeking habeas relief. However, under existing law, one's ignorance of the law is an excuse only to the admissibility of a confession. *See, eg, Miranda v Arizona*, 384 US 426 (1966). It does not excuse a litigant's failure to meet a procedural hurdle. *See, eg, Rodriquez v Maynard*, 948 F2d 684, 688 (CA 10, 1991); *Whittemore v United States*, 986 F2d 575, 579 (CA 1, 1993); *McGowan v Scott*, 67 F3d 100, 101-102 (CA 5, 1995); *Haley v United States*, 78 F3d 282, 285 (CA 7, 1996).

matter: 28 USC §2244(d) appears to govern the precise legal point at issue; and there appears to be no significant conflict among the Circuits.

RELIEF

WHEREFORE, Respondent prays that this Court deny certiorari in this matter.

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JC/eb

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